مدى فاعلية لجان التحقيق البرلمانية في الرقابة على أعمال السلطة التنفيذية

دراسة نظرية وتطبيقية مقارنة بين الدستورين الأردني والكويتي

The Effectiveness of the Parliamentary Investigation Committees in Monitoring the Actions of the Executive Power
A Comparative Theoretical and Practical Study between the Jordanian and Kuwaiti Constitutions

الطالب

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إشراف الأستاذ الدكتور

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قدمت هذه الأطروحة استكمالا لمتطلبات منح درجة الماجستير في القانون

كلية الدراسات القانونية العليا

جامعة عمان العربية للدراسات العليا

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مدى فاعلية لجان التحقيق البرلمانية في الرقابة على أعمال السلطة التنفيذية
"دراسة نظرية وتطبيقية مقارنة بين الدستورين الأردني والكويتي"

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الملخص

هدفت هذه الدراسة إلى توضيح فاعلية لجان التحقيق البرلمانية في الرقابة على أعمال السلطة التنفيذية في الدستورين الأردني والكويتي وبيان التطورات التي استجدت في الأنظمة البرلمانية الحديثة سندا لمدى الوعي السياسي، وبيان التحقيق البرلماني ولجانه الدائمة أو النوعية وبيان الاختلاف بين تجربة لجان التحقيق البرلمانية وغيرها كاللجان الاقتصادية واللجان الزراعية واللجان القانونية واللجان الاستشارية.

وقد خلصت الدراسة إلى أهم بعض العوائق التي تحول دون قيام البرلمانات العربية بدورها التحقيقي، وأبرز هذه العوائق الثقافة السياسية المهيمنة في العالم العربي، إذ هناك شعور منتشر في معظم البلدان العربية مفاده ان الحكومات تفعل ما تشاء بصرف النظر عما تريده المجالس النيابية وعما يريده المواطنون... وهو ما يؤثر في استعداد المواطنين للتعاون مع المجالس النيابية في مجالات تعزيز سلطة البرلمانات وتمكينها من الاضطلاع بدورها الرقابي.

الأوضاع السياسية الداخلية، إذ يعد الإقليم العربي من أقل أقاليم العالم تطوراً بالمعيار الديمقراطي، وهناك عدد من الدول العربية لا تزال حتى الآن تغيب عنها الأحزاب السياسية التي

تسهم في تنشيط الدور الرقابي للبرلمان. إذ لا يزال هناك في الدول العربية خلل في العلاقة بين الدولة والمواطن، وبين الحكومات والمجتمعات المدنية حيث تطغى الدولة والحكومات على المواطنين والمجتمعات المدنية.

وقد بينت الدراسة بعض الأفكار من أجل تطوير الدور التحقيقي للبرلمانات في المملكة الأردنية الهاشمية ودولة الكويت وبعض الدول العربية، وهي تشمل اتخاذ بعض الخطوات العملية سواء داخل البرلمان أم خارجه .

وقد خلصت الدراسة إلى أهم التوصيات ومنها ضرورة بيان العلاقة بين لجان التحقيق البرلمانية بشكل عام وجدول أعمال المجلس وخطته المستقبلية في مجالي التشريع والرقابة، والتحقيق البرلماني وموقف الحكومة والأغلبية من طرحه وسبل انتهائه.

وغياب وسيلة التحقيق الاستعجالي جعل بعض التحقيقات عديمة الجدوى , مما أثر في حق عضو البرلمان في الإطلاع على الإجراءات المتخذة لمعالجة المشكل المطروح في حينه وغموض بعض التحقيقات أو عدم استيفائها الشروط المطلوبة، وإعادتها إلى أصحابها أو إرسالها إلى الحكومة، مما يقلل من أهميتها لفوات ظرف ومبرر طرحها.

وإقرار التحقيق الاستعجالي للإجابة عن القضايا المستعجلة والعامة والآنية ولمكتب كل غرفة تكييف طبيعة التحقيق، وإيجاد آلية قانونية لحالة عدم الرد على التحقيق الكتابي المحدد دستوريا بثلاثين يوما.

وتبرز خصوصية تقرير لجنة التحقيق وتقصي الحقائق في وظيفة اللجنة المتمثلة في التحقيق في أمرٍ من الأمور الداخلة في اختصاصات المجلس التشريعي، وهذه المهمة تقتضي أن يتضمن تقرير اللجنة: عرضاً تمهيدياً عن المهمة الرقابية المنوطة باللجنة. بيان إجراءات اللجنة في تقصي جميع الحقائق عن الموضوع المحال، ولها في سبيل ذلك صلاحيات واسعة.تحديد المسؤولية

السياسية التقصيرية مما تترتب عليه إضافة محور مستحدث ضمن تقريـــر اللجنـــة لتحديـــد هـــذه المسؤولية التقصيرية تجاه موضوع التحقيق وتقصي الحقائق، مدعّماً بالإثباتات والمستندات المؤيدة لقرار اللجنة. تقديم مقترحات بشأن علاج ما تبيّن من سلبيات.

Abstract

The Effectiveness of the Parliamentary Investigation Committees in Monitoring the Actions of the Executive Power
A Comparative Theoretical and Practical Study between the Jordanian and Kuwaiti Constitutions

Prepared By
Nasser Al- Mseelem
Supervised By
Dr. khalid al - Zubi

This study aims to clarify the effectiveness of the parliamentary investigation committees in monitoring the actions of the executive Power in both the Jordanian and the Kuwaiti constitutions, to clarify the developments which took place in the modern parliamentary systems. It clarifies the extent of political awareness and the parliamentary investigation and its permanent or qualitative committees It also aims to clarify the differences between the experience of parliamentary committees and other committees like the economic, agricultural, legal and consultative committees.

The study came up with some important results among which were:

- The study showed that there are some hindrances facing the Arab parliaments in practicing their due real role, the most apparent of those are the political culture prevalent in the Arab World.

There is a wide spreading feeling in the Arab countries that the Arab governments are doing whatever they want without paying any attention to what the parliamentary committees and citizens want. This, in turn, affects the willingness of citizens to collaborate with the parliamentary committees in the area of reinforcing and enabling the legislative powers to practice their monitoring role.

The internal political affairs:

- The Arab region is considered the least democratic among the world regions in light of democratic standards.
- There are some Arab countries which are still lacking the presence of political parties which contribute to the activation of the monitoring role of the parliaments.

The economic and social affairs:

- There is still, in the Arab countries, a defect in the relationship between the state and the citizen, between the governments and the civil society organizations where the state and government dominate the citizens and the civil societies.

The researcher made some important recommendations, among which were:

- The necessity to clarify the relationship between the parliamentary investigation committees in general and the parliament's agenda and its future plan in the areas of legislation and monitoring, the parliamentary investigations and the attitude of the government and the parliamentary majority towards proposing and implementing it.
- The absence of the means of expedient investigation made some investigations unfeasible which, in turn, affected the right of the member of parliament to review the procedures taken to handle the problem.
- Some investigations were vague or lacked the required conditions so they were sent back to the concerned parties or to the government. This, in turn, reduced their significance and state of urgency.
- The endorsement of expedient investigation to meet urgent, general and instant cases. The office of each chamber is to determine how investigations shall be carried out, and to find a legal mechanism for the case to which no answer is received in-writing within thirty days as stated by the constitution.
- The particularity of the report of the investigation and fact-finding committee is represented in performing investigations in some of the internal affairs

which lie within the jurisdiction of the legislative council. This mission implies that the report of the committee shall include a preliminary statement about the monitoring mission assigned to the committee, state the procedures followed by the committee in the fact-finding process concerning the subject referred to the committee, which enjoys wide powers in order to realize that objective.

- The determination of the political liability due to misfeasance which entail the inclusion of a new item in the committees report for determining liability concerning the subject of the investigations and fact-finding and which is supported by evidence and documentation to scaffold the resolution of the committee.

- Offering suggestions for treating the negative aspects.

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